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EXAMINER

WEINSTEIN, STEVEN L

ART UNIT            PAPER NUMBER

1761

DATE MAILED: 12/19/2001

6

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No. 09/588405	Applicant(s) MOSSBROOK ET AL
Examiner S WEINSTEIN	Group Art Unit 1761

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- Responsive to communication(s) filed on \_\_\_\_\_
- This action is **FINAL**.
- Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 111; 453 O.G. 213.

### Disposition of Claims

- Claim(s) 1-26 is/are pending in the application.  
Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- Claim(s) \_\_\_\_\_ is/are allowed.
- Claim(s) 1-26 is/are rejected.
- Claim(s) \_\_\_\_\_ is/are objected to.
- Claim(s) \_\_\_\_\_ are subject to restriction or election requirement

### Application Papers

- The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.
- The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner
- The specification is objected to by the Examiner.
- The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. § 119 (a)-(d)

- Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- All  Some\*  None of the:
  - Certified copies of the priority documents have been received.
  - Certified copies of the priority documents have been received in Application No. \_\_\_\_\_
  - Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

\*Certified copies not received: \_\_\_\_\_

### Attachment(s)

- Information Disclosure Statement(s), PTO-1449, Paper No(s) 445
- Interview Summary, PTO-413
- Notice of Reference(s) Cited, PTO-892
- Notice of Informal Patent Application, PTO-152
- Notice of Draftsperson's Patent Drawing Review, PTO-948
- Other \_\_\_\_\_

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The specification is objected to under 35 U.S.C. 112, first paragraph. The specification discloses it is conventional to provide an overprint varnish over printed ink, that it is conventional to provide radiation-curable inks and varnishes for non-food and food packaging applications that use paper or cardboard as the print substrate, that "most" but apparently not all printed ink and overprint varnish are not FDA approved as either direct or indirect food additives, that it was known to apply printing and varnish directly to plastic films (albeit for non-food uses?) and that radiation curable ink systems "have not found acceptance" for use with relatively thin thermoplastic films in food packaging applications because of the "susceptibility" of such a system to unacceptable levels of migration into the packaged food of undesirable products. It is noted that the last disclosure does not say that the migration is inevitable, only that there is a susceptibility. There is also some question, based on how the specification is worded, as to whether someone in the art has indeed combined a food, packaging film and radiation cured varnish. Clarification as to what is prior art and what has been done in the prior art relative to the combination is requested. Also, since it is disclosed that the radiation-curable systems have not found acceptance in thin films for food because of the susceptibility for contamination and since it does not appear nor is it apparent that applicants have modified any of the compositions or films conventionally known, it is not clear how applicants avoid the problem that applicants urge that the prior art was concerned about; i.e., contamination. That is, applicants are apparently using known polymeric films, known radiation curable inks and

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varnishes, etc. How therefore do applicants prevent contamination when they urge the prior art could not? Clarification is requested. It is also not clear whether the radiation-curable systems have been used on thick plastic films since applicants appear to make a distinction that such systems have not found acceptance with "relatively thin" films. Clarification is required on this point as well.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over applicants' admission of the prior art found throughout the specification.

In regard to claim 1, and as noted above, applicants disclose it was well known to provide a packaged food product comprising a food product, and a package enclosing the food product, wherein the package comprises a coated printed film comprising a substrate film comprising one or more thermoplastic materials, wherein the substrate film has a print side and an opposing food side (page 2, para. 4), an image printed on the print side of the substrate film, and a varnish over the printed image (page 2, para. 4). Note, too, on page 3, it is disclosed that "typically" a package will conduct a migration study to establish that a printed ink or over print varnish component will not migrate through the printed film in a significant amount to meet FDA

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standards. Since most food packaging films are less than 15 mils, it is assumed that applicants' admission of the prior art meets the recited thickness. Thus, applicants have admitted that some inks and varnishes will not migrate through the film. The claims appear to differ from applicants' admission of the prior art in the recitation that the varnish in a plastic film, food package of less than 15 mils has been radiation cured, as opposed to a varnish in food packages which have not been radiation cured. However, applicants' admission of the prior art also states that radiation cured inks and radiation cured varnishes are conventional in the art and applicants are not the first to employ radiation cured inks and varnishes in packaging materials. However, applicants' admission of the prior art only discloses that whereas the radiation cured inks and varnishes have been used in paper or cardboard packages (and presumably thick plastics) they have not found "acceptance" for use with relatively thin thermoplastic films because of the "susceptibility" to unacceptable levels of migration of chemicals. This phrase "acceptance" because of a result implies that such products, as those recited, have been previously made. In any case, once it is known to provide thin film plastic food packages with ink and a varnish overcoat, and once it is known to determine which conventional materials are or are not susceptible to migration and once it is known to employ radiation cured varnishes, to substitute in a food package one conventional varnish for another conventional varnish especially when radiation cured varnishes apparently have well known properties and at least some advantages over non-radiation cured varnishes, is seen to have been obvious and an obvious matter of routine experimentation. As noted above, applicants have not apparently disclosed what is it

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about their generic claimed (and conventionally known) varnish material, other than the last paragraph recitation of a functional property, that causes it to be less susceptible to migration than the prior art (which applicants state generally had a migration problem). All of the remainder of the claims have been fully reviewed and are rejected for the same reasons above. The specification fully details that the films, inks, varnish, methods of packaging, etc. are all conventional.

Any inquiry concerning this communication should be directed to Mr. Weinstein at telephone number (703) 308-0650.

Weinstein/dh

October 31, 2001

Corrected - November 6, 2001

*Steven Weinstein*  
STEVEN WEINSTEIN  
PRIMARY EXAMINER  
ART UNIT 132 1761  
12/18/01